

Bruce A Timmons
September 21, 2020

The Honorable Graham Filler, Chair, House Committee on Judiciary
Members of the House Committee on Judiciary

Statement Regarding

HB 5846 (Kahle) - Traffic control: driver license; eliminate suspension and revocation of driver license as sanction for certain vehicle code violations, esp. MCL 257.321a and 257.907.

HB 5847 (Meerman) - Traffic control; eliminate suspension of operator's or chauffeur's license for minor-in-possession violations, esp. MCL 436.1703.

HB 5849 (Mueller) - Traffic control: to juror compensation reimbursement fund; update cross reference to license suspension provision in MCL 257.321a. MCL 600.151d.

[HB 6235 (Neeley) – State civil infractions; eliminate denial to issue or renew one's driver license for failure to appear or pay fines and costs. MCL 600.8827.]

I take no position in support or opposition. I represent no organization.

Given bipartisan support, stakeholders support, and Chief Justice's and Governor's Michigan Joint Task Force on Jail and Pretrial Detention (convened by Gov. Whitmer and co-chaired by Lt. Go. Gilchrist, and C.J. McCormack) advocating for elimination of license suspension for a host of law violations on the premise that suspension should not apply to conduct unrelated to driving, I assume the package (esp. **HB 5846**) most likely will move, pass both house, and be signed by Gov. Whitmer.

However, this package may come with ramifications and unintended consequences that have not, to my knowledge, been addressed or even discussed publicly during consideration of this package – concerns that I believe policymakers and the public should be aware of. Having retired in 2012 after a 45-year career in various Michigan legislative legal and policy positions, including covering many of the statutes affected by parts of this package, I am concerned that the questions below have slipped below the proverbial radar during a laser focus only on the objectionable uses of driver license suspensions.

Please pardon the length of this document. The questions I have included may make little sense without context and history. I hope you will find the questions worth pursuing.

A, Traffic violations/civil infractions primarily but also MIPs, and SCIs:

Under current law, which **HB 5846** would change, a motorist who failed to appear in response to a traffic citation or pay fines and costs can have his or her driver's license suspended until that matter is resolved.

Background: When the traffic civil infraction system was enacted in 1978 (PA 510, eff. 8/1/1979) to decriminalize minor traffic violations, one of the obvious changes was to eliminate the possibility of jail for nonpayment of fines and costs. Instead, the preferred 'backup enforcement' method (or incentive to comply) for failure to appear or to pay fines and costs was suspension of the driver's license – over other options like issuance of a bench warrant for contempt, attachment, execution, or making such failure a misdemeanor that could lead to a criminal charge and possible jail. All those options were allowed but not as the expected recourse. [Note also that PA 510 eliminated jury trials and appointed counsel for minor traffic, cum civil infractions, with minor consequences of a fine and cost, each less than \$100.] Similar procedures apply to State Civil Infractions (**SCIs**), that are decriminalized former misdemeanors processed as state law violations, which also began with minimal civil fines.

It was my understanding in the past with traffic citations and with the earlier “civil fine” for minor-in-possession (**MIP**) violations (pre-mid 1990’s) that district judges shied away from bench warrants. For MIP, the standard complaint of district judges (that led to reinstatement of misdemeanor penalties in the mid-1990s) was that the civil MIP sanction was unenforceable. They complained that juveniles (under age 21) thumbed their nose at the citations and did not pay the civil fine.

Note this Distinction: For traffic civil infractions and MIPs, failure to appear or pay, after a 28-day court notice to the motorist and 14 days to respond and pay, will cause an automatic license suspension. For SCIs and unpaid parking, the consequence is the inability to get or renew a license, which for most defendants will be months before that sanction applies, with notice of that up front.

Q to ask: What is the current scofflaw rate for traffic civil infractions? Or for MIPs?

Q to ask: To what extent have district judges used bench warrants where motorists or MIPs (as a SCI violation) fail to appear or pay fines, costs, and assessments?

Q to ask: If license suspension is eliminated under **HB 5846** and failure to appear or pay is no longer a misdemeanor once MC 257.321a(1) is stricken (repealed) in HB 5846, how will district judges foster compliance by motorists or MIPs who are disregarding those citations?

Q to ask: How will courts collect the default judgments that can be entered for failure to appear or pay for traffic civil infractions? Attachment (RJA Ch 40) or execution (RJA Ch 60), both referred to in MCL 257.907(10)? Through collection agencies? Use of bench warrants? Are any of those options ‘cost effective’ enough to use?

Q to ask: Do SCAO or your district judges anticipate a greater scofflaw rate if HB 5846 eliminates the leverage for compliance provided by a driver license suspension, or no change?

Q to ask: Does SCAO have an estimate as to what a reduction in compliance could have on revenue for libraries and courts, as well as programs funded by the Justice System Assessment of \$40 imposed for traffic civil infractions? (More on the JSA below.)

Q to ask: Will this package (including **HB 5847** (MIPs) and **HB 6235** (SCIs) in effect ‘legalize’ what are now state civil infractions (SCIs) or MIPs because the only realistic leverage for compliance will be gone? (A bench warrant for contempt and misdemeanor penalties for no-shows for SCIs would still exist, but not for MIPs – if I read these bills correctly – but will either be used?)

B. Juror Compensation Reimbursement & the Clearance Fees that now must be paid to Secretary of State (SOS):

Under current law, MCL 257.321a(11), once the defendant resolves the court matter for traffic civil infractions, SCIs, MIPs, and unpaid parking, he or she must pay a **\$45 “clearance fee”** to the Secretary of State (SOS) – \$15 to SOS (for state GF/GP), \$15 to the court funding unit, and \$15 to the Juror Compensation Reimbursement Fund (JCRF).

Juror Compensation Reimbursement Fund: Under **HB 5846**, elimination of the driver’s license suspension for traffic civil infractions – as well as MIPs, state civil infractions, and unpaid parking – also eliminates the clearance fee of \$45 associated with removing the SOS suspension and thus the corresponding revenue that now is the primary source of money for the Juror Compensation Reimbursement Fund (**JCRF**). This fund reimburses counties primarily (but also cities and townships that fund the local District Court) to cover the expense incurred by the juror per diem increase above pre-2003 rates. Note that the JCRF was created in compliance with the Headlee Amendment to cover the increase in a mandate cost. I have asked SCAO how it will respond to the loss of that revenue, with no response.

Q to ask: Will SCAO pro-rate reimbursements to court funding units?

Q to ask: Will SCAO use of other Judicial appropriations to make up any shortfall, or seek direct GF/GP replacement money?

Q to ask: Will SCAO at least forego use of the JCRF to pay for an SCAO FTE and a contract for a jury management software vendor? (See MCL 600.151e(2) and (3), per 2017 PA 52, HB 4210. [The JCRF was not established to pay for either! Note that on 4 occasions a surplus in the JCRF was used to balance the Supreme Court budget instead of increasing juror comp or mileage. See **MCL 600.151d** for this history.]

Q to ask: If the JCRF has insufficient revenue to fully reimburse local governments for juror compensation, will there be pressure (like from Michigan Association of Counties) to revert juror per diems back to pre-2003 levels (meaning \$15/day or \$1.875/hr.)

C. License Non-Renewal for Unpaid Parking:

Background: For decades under MCL 257.321a, a block or “flag” against renewal of a driver’s license kicked in only if the court chose to notify SOS that a person had accumulated **at least 6** unpaid parking tickets. The premise expressed by advocates at the time was that anyone can accumulate a couple of parking tickets and the license leverage should only be used against those who clearly did not respond to tickets for lapsed meters or illegal parking. I do not know how many cities utilized this mechanism for unpaid parking. Grand Rapids and Detroit have.

In 2012 (PA 12, SB 130) the Legislature reduced that number from 6 to **3** unpaid parking violations (only 2 if disabled parking), with a sunset of 1/1/2018. In 2017 (PA 236, SB 478) Grand Rapids and Detroit convinced the Legislature to scrap the sunset. (I testified against that bill in House Transportation.)

The complaint about using a driver’s license suspension as in current law is unjustified and a worthy target of reform. It is an over-reach. Note also that parking tickets are against the vehicle owner, who is not necessarily the individual who violated parking rules.

Q to ask: How many “holds” does SOS currently have for unpaid parking?

Q to ask: How will loss of this leverage affect Grand Rapids and Detroit parking?

D. Use of the Court System to Raise Revenue:

The last witness at House Judiciary Committee meeting Sept 16, Geoffrey Leonard representing the Detroit Justice Center, alone raised the issue about affordable fines and costs that he thought would improve compliance.

1. **Fines and costs for traffic civil infractions:** Still minimal, at least per SCAO annual suggested fines and costs for civil infractions. Most within \$35-53 for both, well under the statutory maximum of \$100 each for civil fines and for costs, as set by 1978 PA 510 some forty years ago. See MCL 257.907(2), first sentence, and MCL 257.907(4).

Background: When minor traffic violations were decriminalized in 1979, a maximum of **\$100** was set for civil fines. That is still the ceiling that applies to most violations – except where the Legislature has dictated a higher amount, such as for commercial vehicle violations (up to \$250 civil fine per MCL 257.907(3) or, more recently for texting while driving or using a cell phone while driving. See **MCL 257.907(2)**.

SCAO has been instructed per **MCL 257.907(8)** to “annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions. This recommendation is not binding upon the courts having jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state.”. That recommendation is public but not easy to find. Latest I found was for 2019 and this is a link to it:

https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/fc_ci.pdf

Note that the SCAO recommendation for the civil fine for the vast majority of violations is **\$35** – well under the \$100 ceiling set by MCL 257.907(2). Costs range from \$35 to \$53. The typical recommended total is **\$110 to \$128**, with the largest portion many times being the **\$40**

justice system assessment (discussed below) – not the fine nor the costs. When the civil fine is higher, it reflects a statutory amount set by the Legislature, not controlled by SCAO or judges.

Q to ask: What is the civil fines and costs schedule for your local district court – or representative courts – for routine traffic violations? Do they follow the SCAO schedule, or apply higher fines and/or costs? [Reason for the schedule is to facilitate inquiries by those who get traffic citations and want to know what they have to pay – most often by mail, on-line, or at court clerk’s counter.]

2. Justice System Assessment of \$40 – that may even be the highest component of what motorists are directed to pay for a traffic citation.

Background: What began as a \$5 surcharge on traffic tickets to fund the secondary road patrol (service provided by MSP) in the late 1980’s morphed into a series of \$5 surcharges for highway safety, justice training, and jail reimbursement and, per MCL 257.907(13) and **2003 PA 73**, that little \$5 surcharge ballooned further into the state-mandated “**justice system assessment**” of **\$40** that is a combination of multiple surcharges the Legislature has added to fund largely criminal-justice programs that the **state** (Legislature) determines worthy of funding through the **Justice System Fund (JSF)** per the formula in **MCL 600.181** – **just so long as it does not come out of GF/GP** as it ought to – secondary road patrol, highway safety, jail reimbursement, justice training, drug treatment courts, state forensic labs, sexual assault victims’ medical forensic intervention and treatment, and children’s advocacy center, along with SCAO, state court fund, court equity fund, and legislative retirement. Most of those destinations rely heavily or entirely on this \$40 assessment.

Note: There have been constitutional concerns about adding the same type “surcharges” to criminal convictions – because they look a lot like a penal fine that, by Constitution, must go toward libraries. Civil infractions have no such impediment, so that sanction (for decriminalized conduct) becomes a convenient vehicle to raise money – for criminal justice.

Q to Ask: How much money is now raised by the justice system assessment?

Q to Ask: **If** compliance for appearance and payment of traffic tickets is reduced for lack of ‘incentive’ to show up and/or pay, what is the impact on revenue the \$40 justice system assessment now produces? Or does SCAO believe HB 5846 and related bills will not adversely affect compliance and revenue for the JSF?

Q to ask: If that assessment were eliminated, or the revenue now produced by it significantly reduced as a consequence of HB 5846, how would that lost revenue be accommodated by MSP, prosecutors, drug treatment courts, etc.– and even within the Supreme Court’s own budget (like indigent civil legal aid and court equity fund that goes to counties)?

Q to ask: So, would the Legislature consider **elimination of the \$40 assessment** to make traffic tickets more affordable and (possibly) make compliance more likely – as hinted by the final witness at the House Judiciary Committee meeting Sept 16? Or are too many programs and agencies dependent upon this money trough and present formidable resistance – unless the Legislature were to substitute commensurate funding from other sources, including GF/GP? (Such alternative funding, in truth, does not seem promising.)

Q to ask: When will the State (Legislature and Governor) stop relying on courts to be the generators of revenue to fund trial courts and criminal justice services in lieu of tax revenue?

Respectfully,

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